

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department on its own Motion into the)	
Appropriate Pricing, based upon Total Element Long-Run)	
Incremental Costs, for Unbundled Network Elements and)	
Combinations of Unbundled Network Elements, and the)	D.T.E. 01-20
Appropriate Avoided Cost Discount for Verizon New England,)	
Inc. d/b/a Verizon Massachusetts' Resale Services.)	

**HEARING OFFICERS' RULING ON MOTION FILED BY
THE CLEC COALITION FOR EXTENSION OF THE
REBUTTAL TESTIMONY FILING DATE**

I. INTRODUCTION

On May 8, 2001, Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") and AT&T Communications of New England, Inc. ("AT&T") submitted to the Department of Telecommunications and Energy ("Department") their direct cases in Part A of D.T.E. 01-20. The May 18, 2001 procedural schedule established June 15, 2001 as the deadline for filing rebuttal testimony.

On May 30, 2001, Allegiance Telecom of Massachusetts, Inc., Covad Communications Company, El Paso Networks, LLC, and Network Plus, Inc. (collectively "CLEC Coalition") filed a Motion for Extension of Time to file rebuttal testimony to account for Verizon's delay in providing outdated software needed to run its proprietary cost models ("Motion"). In support of its Motion, the CLEC Coalition attaches the Affidavit of Dr. August Ankum ("Ankum Affidavit").¹ Verizon, AT&T and WorldCom, Inc. ("WorldCom") filed comments to the Motion on June 7, 2001.

Additionally, by letter dated June 1, 2001, AT&T notified the Department of its concerns regarding incomplete discovery responses by Verizon. During the June 4, 2001 technical session, Verizon informed the Hearing Officers of similar concerns with discovery responses by AT&T.

¹ The Ankum Affidavit was also attached to the CLEC Coalition's Appeal of the Hearing Officers' May 18 Ruling in this docket. The Department issued its Interlocutory Order denying the CLEC Coalition's appeal on June 12, 2001.

II. CLEC COALITION MOTION

A. Positions of the Parties

1. CLEC Coalition

The CLEC Coalition requests a seven business-day extension for the filing of rebuttal testimony due to Verizon's seven business-day delay in providing the CLEC Coalition with the outdated Oracle software needed to electronically access and run Verizon's proprietary cost models (Motion at 1). Specifically, the CLEC Coalition states that it could not access the information on Verizon's disks because they can only be run on outdated Oracle software that is no longer available in retail stores, and that it did not receive the software from Verizon until May 24, 2001 (*id.* at 1-2, citing Ankum Affidavit at ¶¶ 18-20). Accordingly, the CLEC Coalition maintains that it lost seven business days to analyze and run Verizon's cost models, to propound and receive responses to discovery, and to prepare rebuttal testimony (*id.* at 2).

The CLEC Coalition maintains that the Ankum Affidavit illustrates that the requested time is necessary to fully and properly evaluate Verizon's intricate cost model, pose and receive responses to discovery, and assimilate all the information into rebuttal testimony (*id.*). The CLEC Coalition compares the procedural schedule in this docket to the UNE cost proceedings in New York where parties were afforded 139 calendar days to develop responsive testimony, and thus, the CLEC Coalition claims that the seven business-day extension requested here is even more critical under the current time constraints (*id.* at 2-3). The CLEC Coalition asserts that failure to provide the requested extension would materially impact and harm the CLEC Coalition in preparing its case in this proceeding (*id.* at 3).

2. Verizon

Because one of the purposes of discovery is to assist in the preparation of rebuttal testimony, Verizon proposes that the deadline for rebuttal testimony should be set for two weeks after the first round of discovery has been substantially completed (Verizon Comments at 1). Verizon describes its experience with responding to the extensive information requests it has received in this docket, and states that inevitable delays have occurred in the preparation of the responses (*id.*). Verizon also notes that it has concerns about the responsiveness of many of AT&T's responses, and states that it is possible both Verizon and AT&T may seek the Department's assistance in resolving disagreements about discovery (*id.* at 2). Accordingly, Verizon proposes establishing intervals for each remaining activity in the schedule, and to establish specific dates as the schedule progresses (*id.*). Verizon's proposal includes a discovery period for rebuttal testimony scheduling and four weeks for evidentiary hearings.

3. AT&T

AT&T comments on the CLEC Coalition's Motion and about the appropriate revised schedule for this proceeding given the ongoing delays in obtaining discovery responses from Verizon (AT&T Comments at 1). AT&T states that Verizon does not expect to complete its initial responses to outstanding discovery before June 15, 2001 and that subsequent resolution of discovery disputes makes it unlikely that all discovery responses will be completed before the end of June (*id.*). Accordingly, AT&T proposes a revised procedural schedule assuming that all discovery responses regarding direct testimony are completed by June 30, and that there are no substantial delays in receiving discovery responses regarding rebuttal testimony (*id.* at 1-2). The schedule proposes July 18 for the filing of rebuttal testimony and, like Verizon, includes four weeks, rather than the current three, for evidentiary hearings.

4. WorldCom

WorldCom supports adopting the schedule proposed by AT&T (WorldCom Comments at 1). WorldCom also proposes a partial solution to the discovery-related problems to shorten the overall schedule suggested by AT&T and expedite the conclusion of discovery; namely, WorldCom proposes that Verizon permit intervenors in this proceeding to use discovery materials produced by Verizon in other TELRIC dockets in other jurisdictions (*id.* 1-2).

III. ANALYSIS AND FINDINGS

The delay in obtaining the outdated software to access Verizon's proprietary cost models prevented parties from reviewing the entirety of Verizon's direct case filing in a timely fashion, and thus, hindered the parties' ability to prepare rebuttal testimony. Accordingly, an extension of the filing date for rebuttal testimony is warranted. In its Motion, the CLEC Coalition requests an extension of seven business days, which corresponds with the delay sustained in obtaining the needed software by the CLEC Coalition. At this time, however, problems with the submission of discovery responses in a timely fashion have arisen, and in an attempt to avoid further revisions to the procedural schedule, an extension greater than seven business-days is appropriate.

To date, the discovery issued to Verizon has been extensive, and grows on an almost daily basis. In fact, since the filing of replies to the CLEC Coalition Motion on June 7, 2001, AT&T issued its sixteenth, seventeenth and eighteenth sets of discovery to Verizon; the CLEC Coalition issued its seventh set of discovery to Verizon; and Conversent Communications, LLC issued its first set of discovery to Verizon. Given the sheer volume of discovery thus far, Verizon's inability to comply consistently with the ten calendar-day time frame established for discovery is understandable. Yet parties should not be penalized for another party's inability to respond completely to all discovery within the allotted time frame, and because we cannot predict with certainty when discovery will be complete, we find that Verizon's proposal to set time intervals for remaining activities, rather than

specific dates, has merit.

The Hearing Officers further find, however, that setting intervals rather than specific dates for remaining activities may become a source of confusion and delay if disagreements arise among the parties as to when discovery is substantially complete. Stated differently, setting an interval renders the filing date for rebuttal testimony a moving target, requiring the Department to act affirmatively to determine that discovery is substantially complete before the filing date is set. Verizon's concern about the responsiveness of AT&T's discovery responses, and the possibility that both Verizon and AT&T may seek the Department's assistance to resolve such discovery disagreements, supports our conclusion.² Consequently, the Hearing Officers establish the attached procedural schedule, which sets dates certain for the remaining activities in this docket. By identifying definite dates for the remaining activities, the burden of seeking an extension, for whatever reason, remains with the parties.

We clarify that previous procedural schedules did contemplate discovery on rebuttal testimony, and the schedule established today also includes a date for the close of discovery that allows for discovery on rebuttal testimony. The length of the current discovery period, however, has been reduced so that discovery on surrebuttal testimony will not be possible. This approach should prevent outstanding discovery at the commencement of the evidentiary hearings without prejudicing the parties since questions may be asked directly of the surrebuttal witnesses during the hearings, which will be spread over four consecutive weeks.

Lastly, parties are expected to comply with the ten calendar-day discovery response period. In the event that compliance is infeasible for particular responses, the responding party shall notify the Department and the service list, prior to the expiration of the ten calendar-day response period, of the anticipated filing date of the information requests at issue. Additionally, the Hearing Officers remind Verizon of the Ground Rules established in this docket on February 9, 2001 which require Verizon to "provide to the Department and all intervenors a list, updated on a bi-weekly basis, of all information requests issued; where a response has been provided, the Company shall indicate the date of each response, and the name of the individual responding." We expand this Ground Rule to include all parties to whom discovery is issued.

Tina W. Chin, Hearing Officer

Marcella Hickey, Hearing Officer

Date: June 13, 2001

² We do not have any authority to implement WorldCom's proposal to expedite the conclusion of discovery and, thus, do not address it in this Ruling.

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)	

REVISED PROCEDURAL SCHEDULE

Issued June 13, 2001

Part A: Development of TELRIC Rates

July 16, 2001	Pre-filed Rebuttal Testimony must be filed with the Department and served on all parties by 5:00 p.m., both electronically and hard copy.
August 6, 2001	Discovery Period Closes
August 17, 2001	Pre-filed Surrebuttal Testimony must be filed with the Department and served on all parties by 5:00 p.m., both electronically and hard copy.
August 27- September 21, 2001	Evidentiary Hearings. Record Request responses are due seven calendar days from the date of the request.
October 19, 2001	Initial Briefs must be filed with the Department and served on all parties by 5:00 p.m., both electronically and hard copy.
November 5, 2001	Reply Briefs must be filed with the Department and served on all parties by 5:00 p.m., both electronically and hard copy.